

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-9 are presently active in this case.

The outstanding Office Action presents a rejection of Claims 1-3, 6, and 8 under 35 U.S.C. § 103(a) as being unpatentable over Hankawa et al. (U.S. Patent No. 5,727,239, Hankawa) in view of Erby (U.S. Patent No. 6,476,850) and a rejection of Claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Hankawa in view of Erby and further in view of Nelson (U.S. Patent No. 5,237,340) and Booth (U.S. Patent No. 5,738,427).

Initially, Applicants and Applicants' representatives thank Examiner Selby for the courtesies extended to Applicants' representatives during the face-to face discussion conducted on July 26, 2005, between Examiner Selby, Mr. Kato, and Mr. Cardillo. During this discussion the subject matter of Claim 1 was discussed in view of the cited references.

In this regard, Applicants' representatives noted that Claim 1 is directed to an imaging apparatus including an imaging device having a plurality of photoelectric transfer devices and imaging means for imaging an image of a photogenic object on a surface of the imaging device. Further, the imaging apparatus subject matter of Claim 1 was noted to require, among other things, "an electrical signal processing means for interleaving the at least two images of the photogenic object *into one integrated image of the photogenic object*" (emphasis added).

In this last respect, applicants' representatives pointed out that element 20a of Erby that was relied upon in the outstanding Action as corresponding to the claimed "electrical signal processing means," was described at col. 6, lines 46-48 as being video circuits that produce "two interlaced frames 74 and 75." It was also noted that these were described as

being “complementary” frames in the sense that each had different placement for vertical rows of pixels of the same viewpoint as described at col. 6, lines 49-53. It was also noted that the disclosure of Erbey at col. 4, lines 34-37 clearly requires that complementary frames are successively produced, not simultaneously produced, as follows:

Once the two images are created, video circuitry 20, common to the art, then creates two successive, complimentary frames by interlacing the two images by columns of pixels.

The Erbey teaching that these frames are formed as separate compliments of each other presented, for example, at col. 4, lines 50-55 was also noted as follows:

Thus, as shown in FIGS. 2 and 3, interlaced frame B is the compliment of frame A. That is, the odd numbered columns of pixels display the right eye viewpoint and the even numbered columns of pixels display the left eye viewpoint. See also FIG. 11, which shows the layout of the interlaced images for a typical frame 1 and frame 2.

Thus, applicants’ representatives pointed out that element 20a of Erby, which had been relied upon in the outstanding Action as corresponding to the claimed “electrical signal processing means,” at best could produce individual complementary frames (A and B) that were successively produced with column of pixels in alternate positions in these complementary frames. Accordingly, it was noted that no “interleaving” of “at least two images of the photogenic object into one integrated image of the photogenic object” was taught or suggested by Erbey as the integrated image taught by Erbey depended on properly timed control of shutter 30 combined with properly timed displays of individual complimentary frames A and B.

In addition to these points that were brought forward during the above-noted discussion, applicants further point out that the Erbey disclosed interlaced image frames A and B from left eye view point and right eye view point, respectively, are displayed on the same screen 25. This does not mean that these two image frames A and B are integrated into

one image. In this respect, these two image frames A and B are treated independently until they are sent to both the left and right eyes of the viewer, respectively. Thus, the place where these two images frames are integrated into one image is the brain of the viewer.

Furthermore, it is well established that the broadest reasonable interpretation that can be given to means-plus-function language in a pending application is the interpretation statutorily mandated by the sixth paragraph of 35 U.S.C. § 112. *See in re Donaldson Co.*, 16 F.3d 1189, 1194-95, 29 USPQ2d 1845, 1850 (Fed. Cir.1994) (in banc). In this regard, the claimed “interleaving” of “the at least two images of the photogenic object into one integrated image of the photogenic object” is performed by a converter performing rearrangement of pixel signals from the plural images that are simultaneously present to form one and only one integrated image, not two complementary frames. See the specification paragraph beginning at page 7, line 26, for example. This interleaving of a plurality of images to form one integrated image by using a rearrangement converter is clearly nothing like the video processing circuits (20 or 20a) of Erbey that produce successive, not simultaneous, individual complementary frames (A and B as shown by FIG. 11 of Erbey) instead of one integrated image..

In addition to noting that it was unreasonable to attempt to equate the Erbey video circuits (20 or 20a) to the claimed “electrical signal processing means” that must interleave “at least two images of the photogenic object into one integrated image of the photogenic object,” applicants’ representatives further noted that there was no motivation apparent from these references that would reasonably suggest combining their disparate teachings.

In this last respect, applicants’ representatives pointed out that following the teachings and reasonable suggestions of Hankawa actually would have led the artisan away from considering modifications to the produce successive, not simultaneous, individual

complementary frames (A and B, see FIG. 11 of Erbey).

In this regard, it was noted that Hankawa clearly taught (at col. 1, lines 29-36) that “changeover from one image to another” should be avoided because “changeover control of the images becomes complicated. Thus, Hankawa teaches that it is required that the “plurality of images are made to fall on a single sensor at the same time” at col. 1, lines 56-57. However, trying to modify the Hankawa device to produce successive, not simultaneous, individual complementary frames would require the inclusion of changeover complications and the separate cameras that Hankawa seeks to avoid. See *W. L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 1550, 220 USPQ 303, 311 (Fed. Cir. 1983) (error to find obviousness where references “diverge from and teach away from the invention at hand”).

Moreover, it is well established to be error to pick and choose from a reference disclosure only bits and pieces that appear to support a given position while excluding the other parts of the teaching which are necessary for a full appreciation of what is actually fairly suggested to one of ordinary skill in the art. See In re Wesslau, 147 USPQ 391, 393 (CCPA 1965).

Here, there is no reasonable explanation of why the artisan would have used video circuitry 20a of Erbey without the required timing circuitry 20 b and shutter 30 that are necessary to allow the viewer to see a stereoscopic image made up of interlaced complementary frames A and B without the use of special glasses. Clearly, viewing only one of the complementary frames A and B, or even both, without the timing circuit and shutter will not produce a “high quality stereographic image from the two images that can be displayed without the use of glasses,” the rationale offered as motivation at the top of page 4 of the outstanding Action.

Moreover, it is not clear how the artisan would have been led to take just the video

circuitry 20a from Erbey to somehow process the continuous stream of signals that Hankawa requires be produced. The inputs Erbey teaches to be required for video circuit 20a are clearly distinct “left” and “right” input images produced by distinct “left” and “right” video cameras. Production of distinct images associated with distinct cameras is clearly at odds with the Hankawa teaching of col. 1, lines 42-48 that precludes the use of “a plurality of video cameras” and seeks to avoid “frequent alteration between the images.”

In any event, as the above-noted rationale offered in the outstanding Action (producing a “high quality stereographic image from the two images that can be displayed without the use of glasses”) cannot be achieved by simply supplying the output from the image sensor of Hanakawa to the video circuitry 20a of Erbey, it appears that the real thrust of the rejection was that the features presented in the Claim 1 combination were individually known. Thus, the reasoning behind the rejection actually appears to be that Hanakawa shows that a matrix type sensor was known as was the formation of at least two different images on different parts thereof and that Erbey shows that means for interleaving images together for a display was also known. This rationale overlooks the entirely different teachings in these references as to how these features are employed by the two references and the lack of any logical reason as to why they would be combined.

In this last regard, simply demonstrating that isolated claimed features were “known” is not sufficient to establish a valid prima facie case of obviousness as to combining these “known” features. See *In re Rouffet*, 149 F. 3d 1350, 1357, 47 USPQ2d 1453, 1457 (Fed. Cir. 1998) as follows:

[R]ejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability.”

Sensonics, Inc. v. Aerosonic Corp., 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed. Cir. 1996).

Furthermore, the above-noted Hankawa deliberate avoidance of the complications of including image portion changeover (required by the video processing circuits 20 or 20a of Erbey) and the deliberate avoidance of separate video cameras (required by Erbey) raises the further question of what would have led the artisan to even consider a modification to Hankawa based upon the clearly disparate teachings of Erbey embracing the very features that Hankawa seeks to avoid. In this regard, *In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d, 1430, 1434 (Fed. Cir. 2002) requires the PTO to "explain the reasons one of ordinary skill would have been motivated to select the references and to combine them to render the claimed invention obvious."

Dependent Claims 2-3, 6, and 8 are further considered allowable at least for the reasons advanced for Claim 1 from which they depend. These claims are further considered allowable as they recite other features of the invention that are not disclosed, taught, or suggested by the applied references when those features are considered within the context of Claim 1.

Accordingly, Applicants respectfully request that the rejection of Claims 1-3, 6, and 8 under 35 U.S.C. § 103(a) as being unpatentable over Hankawa in view of Erby be withdrawn.

The outstanding Office Action also rejected Claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Hankawa in view of Erby and further in view of Nelson and Booth.

However, it is clear that neither Nelson nor Booth cure the deficiencies noted above as to Hankawa and Erby. Therefore, as Claims 4 and 5 depend indirectly from Claim 1, Claims 4 and 5 are also considered to be allowable for the reasons advanced above as to

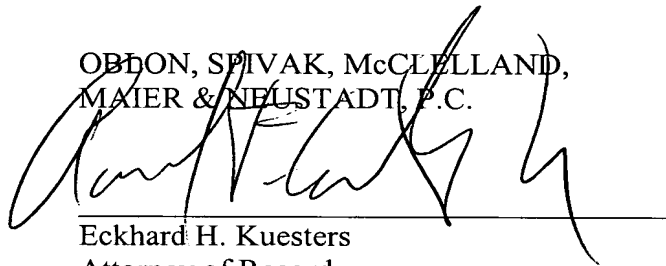
Claim 1. Claims 4 and 5 are further considered allowable as they recite additional features of the invention that are not disclosed, taught, or suggested by the applied references when those features are considered within the context of base independent Claim 1 incorporated limitations.

Accordingly, Applicants respectfully request that the rejection of Claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Hankawa in view of Erby, Nelson, and Booth be withdrawn.

Consequently, in view of the above discussion, it is respectfully submitted that the present application is in condition for formal allowance, and an early and favorable reconsideration of this application is therefore requested.

Respectfully submitted,

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